

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

GERALD POGER, et al.,)	ED103293
)	
Appellants,)	
)	Appeal from the Circuit Court
v.)	of St. Louis County
)	12SL-CC00042
MISSOURI DEPARTMENT OF)	
TRANSPORTATION, et al.,)	Honorable Thomas J. Prebil
)	
Respondents.)	Filed: June 7, 2016

Appellants, a class of homeowners, filed several claims against Respondents Missouri Department of Transportation (MoDOT), Wood Lake Residents Association (Association), and Community Managers Association, Inc. (CMA), after the Association negotiated with MoDOT for the purchase of a portion of common land (the Property) in the Wood Lake Subdivision. Appellants appeal the trial court's summary judgments in favor of all Respondents.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Division Two Holds: The Association had authority to sell the Property under the recorded Indenture of Trust and Restrictions of Wood Lake and the general warranty deeds originally conveying the Property. Further, Appellants had no power to sell their interest in the Property independent of a sale of their lots or dwelling units. Thus, MoDOT did not violate Appellants' rights in purchasing the Property from the Association as Trustee. Additionally, because Appellants accepted the benefits of the sale as beneficiaries, they are estopped from contesting the validity of the sale. The trial court's summary judgment in favor of MoDOT is affirmed.

However, the trial court's summary judgment finding the Association had the power to sell the Property fails to establish the facts necessary to properly grant judgment as a matter of law on Appellants' claims against the Association and CMA for money had and received, breach of fiduciary duty, negligence, an accounting, and violation of the Missouri Merchandising Practices Act. Thus, the trial court's summary judgment in favor of the Association and CMA is reversed.

Opinion by: Gary M. Gaertner, Jr., J.
Philip M. Hess, P.J., and Angela T. Quigless, J., concur.

Attorneys for Appellant: Gregory G. Fenlon
Attorneys for Respondent MoDOT: William L. Sauerwein, John Hein, Grant J. Mabie
Attorney for Respondents Association and CMA: Jon R. Sanner

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